

**United Brotherhood of Carpenters & Joiners of America, Local 953, AFL-CIO and T & P Iron Works, Inc. Case 15-CD-286**

April 15, 1983

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by T & P Iron Works, Inc., herein called the Employer, alleging that United Brotherhood of Carpenters & Joiners of America, Local 953, AFL-CIO, herein called the Carpenters, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than the unrepresented employees of the Employer.

Pursuant to notice, a hearing was held before Hearing Officer Rodney D. Johnson on December 27, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

According to uncontradicted testimony, the Employer is engaged in the fabrication of steel and other items at its place of business located on Highway 90 East in Sulphur, Louisiana. In the last 12 months, T & P Iron Works, Inc., has purchased and received goods valued in excess of \$50,000 directly from points outside the State of Louisiana. In the last 12 months, T & P Iron Works, Inc., has performed services valued in excess of \$50,000 for W. R. Grace, a chemical plant in Carlyess, Louisiana. The parties stipulated that in the last 12 months W. R. Grace has purchased and received goods valued in excess of \$50,000 directly from points outside the State of Louisiana. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the

Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that United Brotherhood of Carpenters & Joiners of America, Local 953, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. Background and Facts of the Dispute

At all times material, the Employer and the Carpenters have been parties to a collective-bargaining agreement. The Employer has abided by this collective-bargaining agreement and has sought referrals from the Carpenters for the performance of carpentry jobs at various customer plants. At its facility, the Employer performs certain fabrication and repair work with its permanent shop employees who are unrepresented by any labor organization.<sup>1</sup>

In June 1982, the Employer began to erect a prefabricated steel building to serve as offices for the Employer's managerial and clerical staff. The building is being erected on the Employer's premises. The carpentry work on the building has been assigned to the Employer's unrepresented permanent shop employees.

On November 22, 1982, Ron Cannon, a business representative of the Carpenters, came to the Employer's facility and witnessed certain carpentry work being performed on the new building. The Employer's vice president, Palombo, testified that in a conversation with Cannon concerning the new building Cannon referred to the building as "my work." On November 23, 1982, two pickets from the Carpenters appeared at the entrance to the Employer's facility with signs which read "T & P Iron Works, Protesting Substandard Working Conditions." The picketing continued on a daily basis until the morning of December 20, 1982.

#### B. The Work in Dispute

The work in dispute involves the carpentry work performed on a prefabricated steel building at the Employer's premises.

#### C. The Contentions of the Parties<sup>2</sup>

The Employer contends that a jurisdictional dispute exists and there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It further contends that the disputed work

<sup>1</sup> The Carpenters does not claim to represent these employees.

<sup>2</sup> The Carpenters did not submit a brief to the Board.

should be awarded to its unrepresented permanent shop employees on the basis of efficiency and economy of operations, skills, the Employer's past practice and current assignment of the work, and area and industry practices.

The Carpenters takes the position that there is no reasonable cause to believe that it violated Section 8(b)(4)(D). It contends that the work in dispute is covered under the terms of the collective-bargaining agreement between the parties. It further contends that it has no objection to the Employer's unrepresented permanent shop employees performing the work but that the Employer should pay these employees wages and benefits in accordance with the terms of the collective-bargaining agreement. The Carpenters additionally argues that a 10(k) proceeding is not appropriate for the resolution of this dispute because it should be resolved through a grievance it has filed in accordance with the collective-bargaining agreement between the parties.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

1. There is uncontroverted testimony in the record that on November 22, 1982, Ron Cannon, business representative of the Carpenters, told Charles Palombo, vice president of the Employer, that "You all are doing my work up there," thus clearly conveying the message that the Employer should utilize the employees represented by the Carpenters rather than the Employer's unrepresented permanent shop employees. The next day Carpenters Local 953 pickets appeared at the entrance to the Employer's facility, protesting the Employer's substandard wages and working conditions.

The only relevant factor relied on by the Carpenters to support its contention that there is no jurisdictional dispute is the claim that it has no objections to the Employer's unrepresented permanent shop employees performing this work but that the Employer should pay and otherwise treat these employees in accordance with the terms of the current collective-bargaining agreement between the Carpenters and the Employer. In essence, the Carpenters argues that its picketing had the sole primary object of maintaining area standards.

In determining the applicability of the statute, the Board must consider whether an object of the picketing was to force or require the Employer to reassign the work from its own unrepresented per-

manent shop employees to members of the Respondent. One proscribed object is sufficient to bring a union's conduct within the statutory language of Section 8(b)(4)(D).

In regard to the above, it is clear from the record that, while there is evidence that an employee doing the carpentry work told Cannon he was not making Carpenters wages, the Carpenters never questioned or otherwise contacted the Employer to ascertain whether the Employer was paying its unrepresented permanent shop employees substandard rates, as required by Board law.<sup>3</sup> This, coupled with Business Representative Cannon's reference to the work as "my work," leads us to conclude that an object of the picketing engaged in by the Carpenters was to force or require the Employer to assign the work in dispute to employees represented by the Carpenters.<sup>4</sup> On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

2. The Carpenters contends that this matter should be resolved through a grievance it has filed in accordance with its collective-bargaining agreement with the Employer. However, the grievance procedure in the parties' collective-bargaining agreement applies to disputes between the Employer and the Carpenters and is not binding upon the Employer's unrepresented permanent shop employees who are not members of the Carpenters. No party contends and no evidence was presented at the hearing that there exists an agreed-upon method for the voluntary resolution of the dispute which is binding on all the parties. Accordingly, we conclude that the dispute is properly before the Board for determination under Section 10(k) of the Act.

#### *E. Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.<sup>5</sup> The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.<sup>6</sup>

The following factors are relevant in making the determination of the dispute before us:

<sup>3</sup> See *Operating Engineers Local 571 (J.E.D. Construction Co.)*, 237 NLRB 1386, 1388 (1978); *Painters Local 79 (Richard O'Brien Plastering)*, 213 NLRB 788 (1974).

<sup>4</sup> *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923 (1977).

<sup>5</sup> *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961).

<sup>6</sup> *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

### 1. Collective-bargaining agreement

The Employer and Carpenters Local 953 are parties to a collective-bargaining agreement at all times material. That agreement does not make specific reference to the disputed work. The parties stipulated that the carpentry work involved in this case is of the type customarily performed by employees represented by the Carpenters. However, there is uncontradicted testimony that the agreement has been applied only to those situations where manpower is needed to meet a customer order. It has never been applied to construction work taking place on the Employer's premises and designed for the Employer's exclusive use. For example, some 5 or 6 years ago the Employer built a mechanic shop for its exclusive use on its premises. The mechanic shop, like the office building involved here, consists of prefabricated metal siding and roof with concrete floors and partitions dividing the building into various sections. Although the Employer was then a party to a collective-bargaining agreement with the Carpenters similar to the one here involved, the Employer assigned the carpentry work to its unrepresented permanent shop employees and the Carpenters did not insist that its agreement with the Employer applied to that work. In these circumstances, we find that the existence of the collective-bargaining agreement between the Employer and the Carpenters does not favor assignment of the work in dispute either to employees represented by the Carpenters or the Employer's unrepresented permanent shop employees.

### 2. The Employer's past practice and preference

Consistent with its own past practice, the Employer assigned the work in dispute here to its unrepresented permanent shop employees and continues to maintain that assignment. Thus, the Employer's past practice and current assignment favors an award of the work in dispute to the Employer's unrepresented permanent shop employees.

### 3. Economy and efficiency of operations

The Employer needs to have its permanent shop employees available at its facility at all times to respond to custom orders which often come in on an unannounced basis. However, incoming orders have diminished in the past year and, when shop work has been slow, the Employer has required its permanent shop employees to perform the disputed work. There is uncontroverted evidence that were the Employer not able to assign this work to the shop employees, it would have to send these em-

ployees home.<sup>7</sup> Thus, assignment of the disputed work to the permanent shop employees allows the Employer to be in a position to immediately fill custom orders which might otherwise be lost to competitors if the orders came in at a time when the Employer had been forced to send its shop employees home. Accordingly, we find that the factors of efficiency, continuity of the work force, and economy of operations favor assignment of the work in dispute to the unrepresented permanent shop employees of the Employer.

### 4. Relative skills

The parties stipulated, and we find, that the employees represented by the Carpenters are qualified to perform the carpentry work on the prefabricated steel building. The skills involved are typical carpentry skills utilized in building construction. One of the employees performing the work has performed residential carpentry work in the past. According to the Employer, the carpentry work on the building has proceeded in a workmanlike manner and it is quite satisfied with the quality of the carpentry work. It therefore appears that the unrepresented permanent shop employees of the Employer have the necessary skills to perform the work in dispute. Thus, the difference in skills does not favor assignment to either group of employees.

### Conclusion

Upon the record as whole, and after full consideration of all relevant factors involved, we conclude that the unrepresented permanent shop employees of T & P Iron Works, Inc., are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past practice and preference, the relative efficiency and economy of operations, and maintenance of a stable work force. The present determination is limited to the particular controversy which gave rise to this proceeding.

### DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of T & P Iron Works, Inc., who are unrepresented permanent shop employees are entitled to perform the carpentry work on a pre-

<sup>7</sup> The Employer also stated that if the work were reassigned to employees represented by the Carpenters this would involve a layoff of its unrepresented permanent shop employees. The Board has noted that this factor should be considered in dispute determinations. *Iron Workers Local 272 (P & G Erectors)*, 203 NLRB 1021, 1023 (1973).

fabricated steel building at the premises of T & P Iron Works, Inc.

2. United Brotherhood of Carpenters & Joiners of America, Local 953, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require T & P Iron Works, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Brotherhood of Carpenters & Joiners of America, Local 953, AFL-CIO, shall notify the Regional Director for Region 15, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.